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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/559,704	04/27/2000	Michael D. Zoeckler	7137	2557

7590 10/31/2005

STEVE M. McLARY, ESQ.  
GRAPHIC PACKAGING INTERNATIONAL, INC.  
814 LIVINGSTON COURT  
MARIETTA, GA 30067

EXAMINER

HARMON, CHRISTOPHER R

ART UNIT	PAPER NUMBER
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3721

DATE MAILED: 10/31/2005

Please find below and/or attached an Office communication concerning this application or proceeding.



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20051026

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## Commissioner for Patents

This letter is in response to the Order Returning Undocketed Appeal to the Examiner of 9/28/05. In the instant case, the Examiner's Answer of 2/24/05 contains a rejection under 35 USC 103(a) of claims 1, 3-5, 7, 9-11, 16, 25, 29-32, and 34 as being unpatentable over Lang (US 5,147,480) in view of Campbell et al. (US 1,600,396). The Order is due to the fact that the previous rejection of 8/25/04 rejected the above mentioned claims under 35 USC 103(a) over Lang '480 including a holding of Official Notice in the body of the rejection.

While the reference of Campbell et al. '396 is relied upon for evidence in the rejection now set forth, the reference is cited due to the traversal of Official Notice by the appellant in the Appeal Brief of 2/02/05 (see page 17, paragraph 2). The traversal was on the grounds that the Official Notice taken by the examiner was improper and cites to MPEP 2144.03 (page 18, last sentence - page 19, line 3). MPEP 2144.03(C) states " If applicant adequately traverses the examiner's assertion of official notice, the examiner must provide documentary evidence in the next Office action if the rejection is to be maintained. See 37 CFR 1.104(c)(2). See also Zurko, 258 F.3d at 1386, 59 USPQ2d at 1697 ("[T]he Board [or examiner] must point to some concrete evidence in the record in support of these findings" to satisfy the substantial evidence test)."

The examiner believes the action taken in the Examiner's Answer of 2/24/05, ie. providing concrete evidence of the Patent to Campbell et al. in order to satisfy the substantial evidence test, was proper and thus does not contain a new grounds of rejection. The appeal is returned to the Board of Patent Appeals for further and appropriate action.

  
Stephen F. Gerrity  
Primary Examiner

Acting SPE 3721